The case of *Ives & Barker* v. *Willans* (1894) 2 Ch 238 is a clear authority for holding that requiring delivery of a statement of claim is not a step in the proceedings within the meaning of Section 5 (1) of Ordinance No. 51.

The ship was arrested at Singapore and the point has been taken that bail has been given for the release of the ship and that thereby the applicants have submitted to the jurisdiction of the Court.

I am not impressed with this argument for obviously this was an urgent and necessary proceeding. The applicants by their motion are not challenging the jurisdiction of the Court, they are merely praying the Court to exercise its discretion to stay these proceedings and to leave them to the tribunal to which they have agreed.

The principle on which the Court will exercise discretion is set out in Russell on Arbitration and Award 12th Edition 105-106.

In *Willesford* v. *Watson*, (1873) L.R. 8 Ch. 473 at p. 480, Lord Selborne said "If parties choose to determine for themselves that they will have a domestic forum instead of resorting to the ordinary Courts, then, since that Act of Parliament (Common Law Procedure Act, 1854) was passed a *prima facie* duty is cast upon the Courts to act upon such an agreement." This *dictum* has subsequently been approved by the Court of Appeal.

It is also settled law that the burden of showing cause why the agreement to submit should not be given effect to is upon the party opposing the application to stay. See *Hodgson* v. *Railway Passengers' Assurance Co.*, (1882) 9 Q.B.D. 188.

On the motion before me I am of opinion that the plaintiff has not discharged that burden and accordingly I order that all further proceedings herein be stayed, but subject to the solicitor for the applicants rectifying his memorandum of appearance by including the applicants as 1st charterers.

No cases have been cited to me and I have been unable to find any authorities, in which a stay of proceedings has been either applied for or ordered on similar grounds in actions *in rem*. The reasons may be that where provision exists for a submission to arbitration by the parties, recourse by one of them to an action *in rem* would be premature. On this point the case of *The Sulph*, (1867) L.R. 2 A. & E. 24; 37 L.J. Ad. 14 is of interest. In that case where a claim made by a diver for injuries received from the defendants steamer was referred to arbitration, with a clause in the agreement of reference that in case the award should not be performed by the defendants all the plaintiffs rights should be reserved, upon failure of the defendants to pay the sum awarded it was held that the plaintiff was entitled to proceed *in rem* in the Court of Admiralty.

The comment upon this case at p. 482 of Russell on Arbitration (12th Edition) is that "it would seem that the decision would have been the same had there been no reservation of the plaintiff's rights."

I take the view then that the order of stay made herein would not affect the plaintiff's rights to proceed further *in rem* in the event of failure by the defendants to pay any sum which may be awarded on arbitration. I reserve the question of costs for further argument.

Order accordingly.

Solicitors for the Plaintiff—*Rodyk & Davidson.*
Solicitors for the Defendant—*Sisson & Delay.*

[ORIGINAL CIVIL JURISDICTION]
HUGGARD, C. J.
March 6, 1934.

CHOP TIONG KOK HANG.....Plaintiffs.

vs.

HOCK CHEONG & CO.....Defendants.

[SINGAPORE CIVIL SUIT No. 789 of 1933]

Bills of Exchange—executed outside the Colony—stamped in the Colony after acceptance—inadmissibility in evidence—Stamp Ordinance, 1929, Ss. 39, 40, 43, 49.

Foreign bills of exchange, stamped after acceptance, are expressly excluded from the general provisions of sections 39 and 40 of the Stamp Ordinance, 1929, under which instruments executed out of the Colony may be stamped within 30 days after receipt in the Colony or at any time prior to acceptance. Where such bills are late-stamped they are deemed to be not "duly stamped" within the meaning of Section 49 of the Ordinance and are therefore inadmissible in evidence.

The facts of the case sufficiently appear from the Judgment.

Smith for the Plaintiffs. The only question before the Court concerns the validity of the bills in view of the fact that there was some defect in stamping.

It is admitted that the bills were not stamped and a penalty was paid. The point is whether the bills were void by reason of their not having been stamped before acceptance. Under the Stamp Act, 1891, section 38 (if that law applies) the plaintiffs should have no case but that section does not appear in our Ordinance in that form. A bill of exchange is defined in Section 2 of the Stamp Ordinance, 1929. Section 4 provides for the charge of duty. The sections of the Stamp Ordinance relevant to this case are sections 40, 43 and 49, proviso (a). Cf. Section 28 of the Stamp Act. *Dawson* v. *McDonald*, 2 M. & W. p. 26. The only consequence of non-stamping is that the bill cannot be admitted in evidence. *Bradley* v. *Bardsley & Anor.*, 15 L.J.Ex. 115 at p. 118. In the present case the matter of stamp-

ing can be made good before trial, *Whistler* v. *Forster*, 8 L.T. 317—318. So objection as to late stamping is not valid.

C. C. Tan for the defendants. The law requires all Bills of Exchange to be stamped in accordance with statutory provisions. Failure to do so renders all such bills void. Halsbury's 2nd ed. Vol. 2 p. 729. Statutory provisions with regard to stamping of foreign Bills of Exchange in this Colony are contained in the Stamp Ordinance, 1929. Section 40(i) of the Stamp Ordinance requires the first holder of any foreign Bill of Exchange to affix thereto the proper adhesive stamp and cancel the same before he presents the bill for acceptance. Plaintiffs have not complied with the requirements of this section and they must prove that there is provision to enable them to stamp the bills after acceptance. Counsel for Plaintiffs has alleged that the Commissioner of Stamps has stamped them under section 43 of the Stamp Ordinance. Foreign Bills of Exchange are excluded from the provisions of section 43 for 2 reasons:—

(1) The section commences thus "Save where other express provision is made by this or any other Ordinance." Express provision with reference to foreign bills has already been made in section 40(i)

(2) Sub-section (a) contains an exclusion clause, viz:—"not being an instrument chargeable with the duty of four cents only or a bill of exchange or cheque or promissory note"

If they are excluded from the operation of sub-section (a) they are also excluded from sub-sections (b) and (c). Decision of Commissioner of Stamps was wrong and Plaintiffs cannot sue on these bills.

Smith in reply. With regard to section 43(a), only inland bills are excluded. Objection raised by Counsel for defendants applies only to admissibility, not to validity. If a bill comes before the Court in proper order on the face of it, then the Court should treat it as valid, *Gattie* v. *Fry & Co.*, 36 L.T. 182. In the present case everything is in order. The Court cannot question its validity now. The bills are duly stamped.

Cur. Ad. Vult.

HUGGARD, C. J.—In this action the Plaintiffs' claim is for $1,039.17 being balance due by the Defendants upon certain bills of exchange. These bills were drawn in Amoy on the Defendants in Singapore and were payable to the Plaintiffs. They were accepted by the Defendants but on presentation for payment they were dishonoured.

In their Statement of Defence the Defendants pleaded a number of defences but at the hearing all these defences were withdrawn except one, namely, that the bills are void on the ground that they were not duly stamped before acceptance.

It is admitted that the bills in question were not stamped before acceptance as required by section 40 of the Stamp Ordinance, 1929, but subsequently they were presented to the Commissioner of Stamps and were stamped by him on payment of a penalty of fifty cents on each bill.

The question I have to decide is whether in these circumstances the Plaintiffs are now entitled to sue and recover on these bills, and the answer to this question depends on whether or not the bills are duly stamped within the meaning of the Stamp Ordinance.

The sections of the Ordinance which expressly relate to the stamping of bills of exchange drawn out of the Colony are sections 39 and 40 (i) which read as follows:—

> "39. Every instrument chargeable with duty executed only out of the Colony, and not being a bill of exchange, cheque or promissory note, may be stamped within thirty days after it has first been received in the Colony.
>
> 40 (i). The first holder in the Colony of any bill of exchange, cheque or promissory note drawn or made out of the Colony shall, before he presents the same for acceptance or payment, or endorses, transfers or otherwise negotiates the same in the Colony, affix thereto the proper adhesive stamp and cancel the same."

The effect of these two sections appears to be clear, namely, that bills of exchange drawn out of the Colony are expressly excluded from the general provision under which instruments executed out of the Colony may be stamped within thirty days after receipt in the Colony, but, by the special provision contained in section 40, they *may* be stamped at any time before they are presented for acceptance or negotiated.

Provision for late stamping of certain instruments is to be found in section 43, and it is apparently under this section that the bills of exchange in the present case were stamped by the Commissioner.

This section reads as follows:—

> "43. Save where other express provision is made by this or any other Ordinance, any unstamped or insufficiently stamped instrument may be stamped after the first execution thereof, subject as follows:—
>
> "(a) where the instrument, not being an instrument chargeable with the duty of four cents only or a bill of exchange or cheque or promissory note, drawn or made within the Colony, is stamped within fourteen days after it has been first executed in the Colony, or, if first executed out of the Colony, within thirty days after it has been first received in the Colony, on payment of the duty only;
>
> (b) where the instrument is stamped within three months after such execution or receipt as aforesaid, on payment of double the amount of deficient duty or a penalty of ten dollars, whichever sum is greater;
>
> (c) where the instrument is not stamped within three months after such execution or receipt as aforesaid, on payment of five times the amount of deficient duty or a penalty of twenty-five dollars, whichever sum is greater;

(*d*) where any penalty prescribed by this section does not exceed one thousand dollars, the Commissioner may reduce or remit such penalty."

It is contended on behalf of the Plaintiffs that this section applies to bills of exchange drawn out of the Colony and that the bills in the present case have therefore been properly stamped by the Commissioner. I have to reject this contention for two reasons. In the first place the section commences with the words—

"Save where other express provision is made by this or any other Ordinance"

and, as I have pointed out above, express provision regarding bills of exchange drawn out of the Colony is in fact made by section 40. In the second place, if section 43 were to apply to bills of exchange drawn out of the Colony then, under paragraph (a) of the section, they would be stampable within thirty days after receipt in the Colony; but this would be in direct conflict with the provisions of section 39 which, as I have already stated, excludes bills of exchange from the general provision which enables instruments executed out of the Colony to be stamped within that period. And if bills of exchange drawn out of the Colony are excluded from the provisions of paragraph (a) of section 43, then in my view they are necessarily excluded from the provisions of paragraphs (b) and (c) also. I think it is clear that paragraphs (b) and (c) of the section apply only to those instruments to which paragraph (a) applies, and the words "the instrument" have the same meaning in all three paragraphs (a), (b) and (c).

For these reasons I am of opinion that the combined effect of sections 39, 40 and 43 is to exclude from the provisions of the last mentioned section bills of exchange drawn out of the Colony, and as the Ordinance contains no other provision for late-stamping such bills I think that the Commissioner was wrong in stamping the bills in the present case.

Then we come to section 49 of the Ordinance which, subject to certain provisos which do not concern us here, provides as follow:—

"49. No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered, authenticated by any such person or by any public officer, unless such instrument is duly stamped."

It follows from this section that before a Court can admit in evidence an instrument chargeable with duty it must be satisfied that the instrument is duly stamped. (See Judgment of Parsons, J. in *Jethibai* v. *Ramachandra Narottam*, 13 Bombay 484).

The expression "duly stamped" is defined as follows in section 2 of the Ordinance:—

"Duly stamped," as applied to an instrument, means that the instrument bears an adhesive or impressed stamp of not less than the proper amount and that such stamp has been affixed or used in accordance with the law for the time being in force in the Colony.

According to this definition an instrument, in order to be duly stamped, must be stamped in accordance with the law for the time being in force in the Colony, and I interpret this to mean that the instrument must bear a stamp of the proper value, it must be stamped in the proper manner with the proper description of stamp, and it must have been stamped at or within the time prescribed by law.

In the present case it is admitted that the bills were not stamped prior to acceptance as required by section 40 of the Ordinance and I have already expressed the view that the Ordinance contains no provision enabling bills of exchange drawn out of the Colony to be late-stamped.

It follows, therefore, that in my opinion these bills are not duly stamped within the meaning of section 49 and I am precluded from admitting them in evidence.

In these circumstances the Plaintiffs' claim fails and must be dismissed with costs.

Judgment accordingly.

Solicitors for the Plaintiffs—*Donaldson & Burkinshaw.*

Solicitors for the Defendants—*Aubrey Davies & Co.*

[ORIGINAL CIVIL JURISDICTION]

MILLS, J.

August 15, 1933.

[APPELLATE JURISDICTION]

HUGGARD, C. J., THOMAS, C. J. (F.M.S.) & GERAHTY, J.

January 25, 1934.

THE OFFICIAL ASSIGNEE OF THE PROPERTY OF LOH CHUK POH, A BANKRUPT.....Plaintiff-Appellant.

vs.

THE OVERSEA CHINESE BANK LIMITED.....Defendants-Respondents.

Bills of Exchange—cheque for payment of dividend—signed by Colonial Treasurer—countersigned by the Colonial Secretary—further countersigned by the Official Assignee—"true owner"—right to sue—Ordinance No. 44 (Bankruptcy) Ss. 24(4), 73(1); Bills of Exchange Act, 1882, S.82.

A crossed cheque for the purpose of paying a dividend in bankruptcy was fraudulently obtained from the Official Assignee. The cheque was signed by the Colonial Treasurer, countersigned by the Colonial Secretary and further countersigned by the Official Assignee. By means of a forged endorsement the cheque was negotiated and paid. The Official Assignee brought an action against the collecting bank for damages for conversion. The bank